

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

NORMAN DICKINSON,)	
)	
Plaintiff)	
)	
v.)	Civil No. 00-248-P-C
)	
JANE DOE (1) (Nicole))	
JANE DOE (2) (Kathleen))	
)	
Defendants)	

**RECOMMENDED DECISION DENYING
LEAVE TO PROCEED *IN FORMA PAUPERIS***

Plaintiff, an inmate at the Cumberland County Jail, seeks leave to proceed *in forma pauperis*. The Application to proceed *in forma pauperis* has been completed and is accompanied by a Certificate signed by an authorized individual from the institution and a ledger sheet indicating the account activity. The Certificate evidences that the applicant has zero funds in his account as of August 31, 2000. The Certificate further evidences that over the last six months the average balance in Plaintiff's account was less than \$5.00 and that the average deposits have amounted to less than \$5.00. The Plaintiff would normally qualify for *in forma pauperis* status.

However, a prisoner with three *in forma pauperis* actions previously dismissed on the grounds that the lawsuit was frivolous, malicious, or failed to state a claim may not thereafter, absent imminent danger of serious physical injury, file a new action without prepayment of the entire filing fee. 28 U.S.C. § 1915(g). Since 1991 Plaintiff has initiated twenty-five lawsuits in this court, including four Petitions for Habeas Corpus. Disregarding the Section 2254 cases, at

least seven of the remaining twenty-one cases have been dismissed by the court as either frivolous or failing to state a claim.¹

Some of Plaintiff's prior cases predate the 1996 enactment of the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915. Those cases which have addressed the retroactive applicability of § 1915(g) are in agreement that there is no impermissible retroactive effect by applying the statute to complaints which were filed prior to April 26, 1996, the enactment date of the PLRA. *See Witzke v. Hiller*, 966 F.Supp. 538, 539 (E.D. Mich. 1997) (collecting cases). Thus, the fact that some of Dickinson's prior cases are at least eight years old does not save him from the operation of §1915(g).

Dickinson may pursue any claim he wishes under the fee provisions of 28 U.S.C. § 1914 applicable to everyone else, but § 1915(g) operates to prevent him from bringing this case *in forma pauperis*. Accordingly, I recommend that the Court **DENY** leave to proceed *in forma pauperis* and grant the Plaintiff 10 days to pay the filing fee, failing which, I recommend that the Court **DISMISS** the complaint.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

¹ These cases include: Dickinson v. Deputy Warden, 1-96-cv-84 (dismissed on State's motion, Brody, J.); Dickinson v. Lawry, 1-93-cv-280 (dismissed as frivolous, Brody, J.); Dickinson v. Allen, 1-93-cv-180 (dismissed by Order Affirming Recommended Decision, Brody, J.); Dickinson v. Tofani, 2-92-cv-352 (dismissed as frivolous, Carter, J.); Dickinson v. Gannett, 2-92-cv-99 (dismissed as frivolous, Hornby J.); Dickinson v. Portland Police Dept., 1-92 cv-261 (dismissed by Order Affirming Recommended Decision, Brody, J.); Dickinson v. Lawry, 1-93-53 (dismissed by Order Affirming Recommended Decision, Brody, J., affirmed USCA, 12/15/93).

Dated this 26th day of September, 2000.

Margaret J. Kravchuk
U.S. Magistrate Judge

U.S. District Court
District of Maine (Portland)

CIVIL DOCKET FOR CASE #: 00-CV-248

DICKINSON v. DOE 1, et al	Filed: 09/14/00
Assigned to: JUDGE GENE CARTER	Jury demand: Plaintiff
Referred to: MAG. JUDGE MARGARET J. KRAVCHUK	
Demand: \$0,000	Nature of Suit: 555
Lead Docket: None	Jurisdiction: Federal Question
Dkt# in other court: None	

Cause: 42:1983 Prisoner Civil Rights

NORMAN E DICKINSON
plaintiff

NORMAN E DICKINSON
[COR LD NTC pse] [PRO SE]
MAINE STATE PRISON
MCI/BOX A
THOMASTON, ME 04861

v.

JANE DOE 1, in her individual
and official capacity as a
NURSE at CUMBERLAND COUNTY
JAIL
defendant

JANE DOE 2, in her individual
and official capacity as a
NURSE at CUMBERLAND COUNTY
JAIL
defendant